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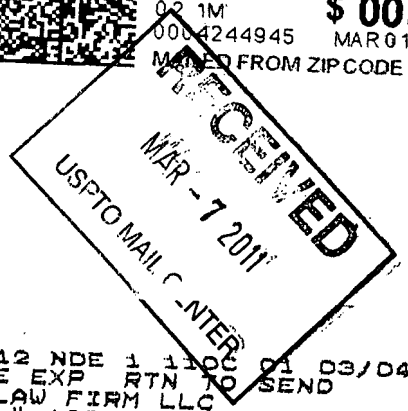


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| 10/723,391 | 11/25/2003 | Marcus Felipe Fontoura | ARC920030080US1 | 8873 |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* MARCUS FELIPE FONTOURA, VANJA JOSIFOVSKI, and PRATIK MUKHOPADHYAY

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Appeal 2009-005393
Application 10/723,391
Technology Center 2100

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Before: LANCE LEONARD BARRY, JEAN R. HOMERE, and DEBRA K. STEPHENS, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

The Patent Examiner rejected claims 1, 13, 25, and 37-53. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

### INVENTION

The Appellants describe the invention at issue on appeal as "parsing documents in query processing [by] . . . producing at least one index of a document written in a mark-up language, corresponding the index to the document, scanning the document, and selectively skipping portions of the document based on instructions from the index." (Abstract, ll. 1-4)

### ILLUSTRATIVE CLAIM

1. A method for query processing by using a streaming application programming interface (API) for a mark-up language data stream of a textual document, said method comprising:

producing, by said streaming API for a mark-up language data stream, an ordered index of all textual elements corresponding to their order in said mark-up language data stream, said ordered index comprising tag identifiers and end positions corresponding to each of said all textual elements;

scanning, by a processor, all tag identifiers of said ordered index to determine if there exists a match between a query and any of said tag identifiers;

parsing a matched textual element, if a tag identifier, corresponding to said matched textual element, matches said query; and

skipping an unmatched textual element for parsing, if a tag identifier,

corresponding to said unmatched textual element, does not match said query.

## REJECTION

Claims 1, 13, 25, and 37-53 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Pub. No. US 2003/0159112 A1 ("Fry").

## ISSUE

The *issue* before us is whether the Examiner erred in finding that Fry teaches scanning all tag identifiers of an ordered index to determine if there exists a match between a query and any of said tag identifiers as required by independent claims 1, 13, 25, and 37.

## FINDINGS OF FACT

Fry describes its invention as follows.

> [A] set of streaming parser APIs to parse an XML [i.e., eXtensible Markup Language] document. An application or client needing access to an XML document can contact an . . . XML processing means in order to gain access to the XML document. The XML processing means can select and instantiate a streaming parser API that is appropriate for the XML document and the client or application.

(¶ 0018.)

ANALYSIS

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, the Examiner makes the following findings.

> Fry teaches in paragraph [31], that "the elements of the XML document are then stepped through by the base parser in combination with the iterative method until the element to be extracted is located". Locating a specific element is a determination achieves the correspondence effect of a matching step . . . ."

(Ans. 13.)

"The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

Here, independent claims 1, 13, 25, and 37 require more than "a matching step." (Ans. 13.) More specifically, they require scanning all tag identifiers of an ordered index to determine if there exists a match between a query and any of said tag identifiers *inter alia*. The part of the reference cited by the Examiner, *supra*, merely teaches stepping through the elements of an XML document, as opposed to the tag identifiers of an ordered index, to locate a specific element, as opposed to determining a match between any of the tag identifiers and a query. In fact, it is uncontested that "[n]owhere does Fry use the term, 'query'." (Reply Br. 3.)

The absence of scanning all tag identifiers of an ordered index to determine if there exists a match between a query and any of said tag identifiers negates anticipation. Therefore, we *conclude* that the Examiner erred in finding that Fry teaches scanning all tag identifiers of an ordered index to determine if there exists a match between a query and any of said tag identifiers as required by independent claims 1, 13, 25, and 37.

## DECISION

We reverse the rejection of claims 1, 13, 25, and 37and those of claims 38-53, which depend therefrom.

## REVERSED

Tkl

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